

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Leanne Fornelli	Team: Squad #8	CCRB Case #: 201505315	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 06/25/2015 4:10 PM	Location of Incident: 3rd Avenue-149th Street 2/5 subway station	Precinct: 40	18 Mo. SOL 12/25/2016	EO SOL 12/25/2016	
Date/Time CV Reported Sat, 06/27/2015 11:18 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sat, 06/27/2015 11:18 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Andrew Nguyen	13120	946057	TB DT12

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Scott Liebensohn	13805	943487	TB DT12
2. POM William Teti	09662	951327	TB DT12

Officer(s)	Allegation	Investigator Recommendation
A.POM Andrew Nguyen	Force: PO Andrew Nguyen used physical force against an individual.	[REDACTED]

Case Summary

§ 87(2)(b) the complainant/witness of this case, filed this complaint on behalf of an unidentified individual. He alleged the following: On June 25, 2015, at approximately 4:10 p.m., at the 3rd Avenue-149th Street 2/5 MTA subway station in the Bronx, PO Andrew Nguyen of Transit Bureau District (TB DT) 12 used physical force against § 87(2)(b) (**Allegation A**). No one was arrested or issued a summons.

§ 87(2)(g)

Due to the Pope and United Nations detail, PO Teti could not be scheduled until October 7, 2015.

Mediation, Civil and Criminal Histories

- This case was ineligible for mediation because the victim is unidentified and § 87(2)(b)
- It could not be determined if a notice of claim was filed for this incident, as the victim in this case is unidentified.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is the first complaint filed by and involving § 87(2)(b) (BR 1).
- PO Nguyen has been a member of service for seven years and has one CCRB allegation pled against him in one other case that was not substantiated and does not reflect a pattern applicable to this case (BR 2).

Potential Issues

- Neither PO Nguyen nor his partner, PO Scott Liebensohn of TB DT 12, collected identifying information for the victim in the case. Neither § 87(2)(b) nor the MTA booth attendant, § 87(2)(b) had identifying information for the victim. § 87(2)(e) Without further information, the victim in this case could not be identified or contacted for a statement.
- Video footage from the subway station at the date and time of the incident was subpoenaed and received from MTA. The footage did not capture any part of this incident.

Findings and Recommendations

Allegation A – Force: PO Andrew Nguyen used physical force against § 87(2)(b)

§ 87(2)(b) (BR 3) said that he was awaiting the train on the subway platform when he saw an unidentified individual (described as a Hispanic male, 5’3” to 5’4” tall, stocky body build, short dark hair, around 15 years old) walk through the emergency exit gate onto the subway platform, seemingly without paying a fare. The individual was speaking to a female and was acting cavalierly and brashly as he walked through the gate. The individual was trash talking about how this was New York and he could do what he wanted. § 87(2)(b) tried to ignore the individual, as he was being loud and obnoxious. Out of his left peripheral vision, he observed an officer whose name he later observed as PO Nguyen approach the right side of the individual on

the platform side of the turnstiles. The individual leaned his back against the gate. § 87(2)(b) was uncertain if PO Nguyen or the individual said anything upon PO Nguyen's approach, but it could not have been anything substantive given the short time that elapsed. PO Nguyen immediately grabbed the individual's left arm with his right hand and pushed the individual backward about one foot through the gate. At this time, § 87(2)(b) was about fifteen feet away from PO Nguyen and the individual. He could not hear anything said between PO Nguyen and the individual at this time. He did not see the individual make any threatening gesture toward PO Nguyen. Very soon after PO Nguyen pushed the individual through the gate, he took his right arm off of the individual's left arm, cocked it back so it was perpendicular to his body and slapped the individual across the face one time. A loud thud sounded and § 87(2)(b) saw PO Nguyen's hand make contact with the individual's face. At this time, PO Nguyen's partner, identified via the investigation as PO Liebenson, walked toward PO Nguyen from the same direction that PO Nguyen had walked to reach the individual. § 87(2)(b) had no awareness of what PO Liebenson was doing before this time. Individuals on the unpaid side of the turnstiles who witnessed this made comments such as "Why did you do that?" Why did you have to slap him?" and implored PO Nguyen to have better self-control. The officers and the crowd engaged in a small shouting match. The individual was crying at this time, cursed at PO Nguyen repeatedly and challenged him to fight. § 87(2)(b) could not recall exactly what the individual said, but heard him use the word "fuck." Once the situation escalated, § 87(2)(b) moved further, about thirty feet away, and continued to await the train. About five people who the individual appeared to be with separated the individual from the officers, although the individual tried to run around them to reach PO Nguyen. PO Liebenson seemed to be helping calm the situation. The individual seemed to be released without arrest or summons, and was only made to leave the platform. The officers walked closer to § 87(2)(b) and stopped near him, at which time § 87(2)(b) discreetly collected PO Nguyen's name. § 87(2)(b) filed this complaint because he felt PO Nguyen displayed poor tact and behaved completely inappropriately. § 87(2)(g)

§ 87(2)(b) (BR 5), the MTA booth attendant, said that she heard a loud argument and screaming from § 87(2)(b) who sounded like a young male. § 87(2)(b) only heard and never saw the individual, who was surrounded by people. Others who included a young female were telling him to calm down. The individual would not listen, but continued to behave aggressively, loudly and outrageously, and § 87(2)(b) did not know why. § 87(2)(b) had a long line of about 50 customers and was focused on them. She saw that two officers, identified as PO Nguyen and PO Liebenson were taking care of the situation, although she could barely see them. She did not see the officers make physical contact with the individual. She paid no further attention to the situation. Suddenly, within two to three minutes, everything became calm again. She did not know where the individual went, or whether he was released or arrested. No civilian or officer approached her about the situation.

PO Nguyen (BR 6) said that he stood on the platform side of the turnstiles when he observed § 87(2)(b) (described as a Hispanic male, 5'5" tall, husky body build, seemingly 18 to 20 years old) walk through the emergency exit gate without paying a fare. PO Nguyen immediately approached him, and PO Liebenson stayed behind, as he was giving directions to a customer. PO Nguyen asked the individual how old he was, and the individual answered that he was 15 years old. PO Nguyen asked the individual if he had identification, and the individual answered that he did not. PO Nguyen told the individual that he had to leave the subway station because he did not pay his fare. The individual, who was very combative, said that he did not

have to pay because he was fifteen years old. PO Nguyen insisted that the individual had to pay or leave, and the individual refused, saying, “Fuck you. I don’t have to leave. I’m § 87(2)(b) PO Nguyen placed his hand on the individual’s chest to escort him out of the gate, and the individual slapped his hand away. The individual told PO Nguyen to go fuck himself, and that he did not want PO Nguyen to touch him. PO Nguyen said, “Don’t do that again,” and placed his hand for a second time on the individual’s chest. PO Nguyen did not push the individual, but applied pressure which caused the individual to walk backward three or four steps through the gate to the unpaid side. The individual then pushed PO Nguyen in the chest and said, “Don’t fucking touch me.” PO Nguyen said, “Look, you got to leave now.” He grabbed the individual’s left upper arm and tried to escort him out. The individual yelled, “Get off me. Get the fuck off me.” A female who was with the individual yelled, “Get the fuck off my brother. What are you doing?” PO Nguyen and F1 argued about whether or not the individual had to pay. A crowd began to form, at which time PO Liebenson approached. The individual continued to yell and scream, and called PO Nguyen a “pussy,” during which time he was crying. PO Nguyen assumed the individual was crying because he thought that PO Nguyen was picking on him. Eventually, a friend of the individual took the individual out of the subway station. Aside from what PO Nguyen described, he made no further physical contact with the individual. He did not slap the individual and saw no officer do this. PO Teti arrived late to the subway station and did not witness the incident.

PO Liebenson (BR 7) said that he saw § 87(2)(b) (described as a § 87(2)(b) -old male) walk through the emergency exit gate without paying a fare. PO Nguyen walked over to the individual to instruct him to leave. PO Liebenson was going to walk with him, but was stopped by a customer, who he later learned was the cousin of the individual and who asked if he could access the platform because he did not have a metro card. PO Liebenson said he could do this, and opened the gate closest to him (not the same gate through which the first individual walked) to allow him to come through. By the time he reached PO Nguyen and the individual, less than a minute later, they were yelling at each other and were both upset. The individual was on the unpaid side of the gate and PO Nguyen was on the platform side. The individual acted as if he wanted to fight PO Nguyen and said, “I’m not a punk,” as he kept trying to come near PO Nguyen. The individual walked back through the gate toward PO Nguyen, who grabbed the individual around his shoulders and arms. At this time, the individual was crying and PO Liebenson never learned why. PO Liebenson grabbed the individual’s right arm to separate him from PO Nguyen. PO Liebenson saw no further physical contact between PO Nguyen and the individual. PO Liebenson did not see PO Nguyen slap the individual. PO Liebenson told the individual that he had to leave. During this time, PO Teti stood behind PO Nguyen and PO Liebenson, and did not get involved. PO Teti had been standing on the unpaid side of the turnstiles when the incident began. In the next couple minutes, PO Nguyen and the individual continued yelling at each other. PO Liebenson calmed the situation down and got the people who were with the individual to take him out of the subway station. After the individual left, the officers resumed patrol.

PO Teti (BR 9) said that he did not witness this incident. He was standing about fifty feet away from PO Nguyen and PO Liebenson on the paid side of the platform. He saw a crowd of about thirty people begin to form, but did not walk over as the station is usually busy and no one called for help. The group was looking toward the turnstiles. At this time, PO Teti did not see the other officers. He heard no yelling or disturbance. After about five minutes, the crowd began to gather closer together and closer to the turnstiles, which prompted PO Teti to walk over to find out what was happening. At this time, PO Nguyen and PO Liebenson stood on the paid side of

the platform, and PO Teti never saw either of them leave the area and did not know if they ever did. PO Teti spoke to PO Liebenson, who said that PO Nguyen had a verbal altercation with a § 87(2)(b), who had been ejected from the subway station after failing to pay the fare and was no longer present. PO Teti never heard or saw this individual before, during or after the incident. PO Liebenson mentioned no force that PO Nguyen used against the individual. PO Nguyen said nothing about what occurred and PO Teti asked him no questions about it. PO Teti denied seeing PO Nguyen slap or use any physical force against a § 87(2)(b), or have any physical interaction with any individual.

Officers may only use the minimum amount of force necessary to overcome resistance, Patrol Guide Procedure 203-11 (BR 8).

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Squad: 8

Investigator:	_____	<u>Leanne Fornelli</u>	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Attorney:	_____	_____	_____
	Title/Signature	Print	Date